

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-2531

United States of America,

Appellee,

Oscar Santoscoy-Martinez,

Appellant.

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Appeal from the United States
District Court for the Western
District of Arkansas.

[UNPUBLISHED]

Submitted: January 15, 2004

Filed: January 21, 2004

Before MORRIS SHEPPARD ARNOLD, BYE, and RILEY, Circuit Judges.

PER CURIAM.

Oscar Santoscoy-Martinez pleaded guilty to illegally reentering the United States after deportation following a conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a) and (b)(2). The district court¹ sentenced him to 46 months imprisonment and 3 years supervised release. On appeal, Mr. Santoscoy-Martinez's counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that (1) the district court erred in enhancing Mr. Santoscoy-

¹The Honorable Robert T. Dawson, United States District Judge for the Western District of Arkansas.

Martinez's sentence based on a Texas burglary conviction, because he received ineffective assistance of counsel in that case; and (2) the court should have granted a downward departure based on Mr. Santoscoy-Martinez's overrepresented criminal history.

After careful review, we reject these arguments. Mr. Santoscoy-Martinez cannot, in these proceedings, collaterally attack his prior state sentence based on ineffective assistance of counsel, see United States v. Jones, 28 F.3d 69, 70 (8th Cir. 1994) (per curiam); and the departure argument is unreviewable, because there is no indication the district court believed it lacked authority to depart, see United States v. Moore, 245 F.3d 1023, 1026 (8th Cir. 2001).

Finally, we have reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), and we find no nonfrivolous issues. Accordingly, we affirm. We also grant counsel's motion to withdraw.
